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OFFICE OF PETITIONS

In re Application of :
Parks et al. :
Application Number: 09/928764 :
Filing Date: 08/13/2001 : ON PETITION
Attorney Docket Number: 44446A :

This is a decision on the petition under 37 CFR 1.137(b)¹ filed on December 12, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on January 11, 2008, for failure to timely submit a reply to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on December 10, 2007, which set a one (1)-month shortened period for reply. No extensions of time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on July 16, 2008.

Receipt of the amendment filed with the present petition is acknowledged.

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.² In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The Revocation and Power of Attorney filed with the subject petition cannot be accepted because petitioners have not established a chain of title from the inventor(s) of the application for patent to the current assignee. Petitioners have provided a statement under 37 CFR 3.73(b) including an assignment from The Dow Chemical Company to Dow Global Technologies, Inc. However, there is no assignment recorded or provided showing the transfer of ownership from the three named inventors who signed the declaration filed on August 13, 2001, to The Dow Chemical Co.

Likewise, the change of correspondence address cannot be accepted because it is not signed by an attorney of record. As stated above, the power of attorney submitted with the subject petition cannot be accepted because a chain of title from the inventors to the current assignee has not been provided.³ A change of correspondence address may not be signed by an attorney or agent not of record (see MPEP § 405). See MPEP 601.03.

Petitioners should submit a new revocation and power of attorney, accompanied by a statement under 37 CFR 3.73(b), showing a chain of ownership from the inventor(s) of the patent application to the current assignee. Petitioners may also wish to consider recording the assignment(s) in the USPTO.

A courtesy copy of this decision will be mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record.

² See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1208 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

³ The assignment filed on December 12, 2008 from The Dow Chemical Company to Dow Global Technologies, Inc., references an assignment from the inventors to the Dow Chemical Company, but no copy of said assignment has been provided, and no reel and frame numbers showing where the assignment is recorded has been provided.

This application is being referred to Technology Center Art Unit 1796 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



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